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DIRECTOR OFFICE
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In re Application of
Winand D'SOUZA
Application No. 09/684,949
Filed: October 10, 2000
For: PORTABLE ELECTRONICS DEVICE

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the Petition to Withdraw of the Holding of Abandonment, filed January 30, 2004, which is being treated as a petition pursuant to 37 C.F.R. § 1.181(a). No fee is required.

This application was abandoned for failure to file a timely response to the non-final Office action mailed February 12, 2003. The application became abandoned May 13, 2003 after conclusion of the shortened statutory time period set in the outstanding Office action. A Notice of Abandonment was mailed December 24, 2003.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

In support of the instant petition, petitioner has submitted a statement stating that the Office action was not received by the practitioner and that a search of the file jacket and the docket records of the application produced no evidence that the non-final Office action was received.

In view of the above, there is showing of non-receipt of the Office action mailed February 12, 2003.

The petition is **GRANTED**.

The Notice of Abandonment is vacated and the holding of abandonment is withdrawn.

The application file is being returned to the examiner to update the Office action as appropriate. From there, the file will be forwarded to the Technology Center's technical support staff for mailing of the updated action. The period for response will be set to run from the date of the new mailing.



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